

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re the Application of

U S WEST, INC AND QWEST
COMMUNICATIONS
INTERNATIONAL, INC.

For an Order Disclaiming Jurisdiction or,
in the Alternative, Approving the U S
WEST, INC. – QWEST
COMMUNICATIONS
INTERNATIONAL, INC., MERGER

DOCKET NO. UT 991358

NON-CONFIDENTIAL
PUBLIC COUNSEL BRIEF IN
OPPOSITION TO TERMINATION
OF THE QWEST SERVICE
QUALITY PERFORMANCE
PROGRAM

I. INTRODUCTION

1. Public Counsel submits this post-hearing brief in opposition to the Qwest Petition to Terminate or Modify the Service Quality Performance Program (“Petition”), Ex. 1. Public Counsel respectfully recommends that the Commission deny Qwest’s petition in full. The Qwest Service Quality Performance Program (“SQPP”) is working as intended and having the desired effect of providing an incentive for improvements in the service experienced by the company’s customers. Qwest has responded by showing gains in some areas. In other areas, room for improvement remains. In each year of the program to date, Qwest has failed to meet five of the eight SQPP measures and as a consequence has paid over \$7 million in credits to Washington customers. Termination of the SQPP at this time would be premature and would place at risk the service quality gains obtained so far.
2. This brief will focus primarily on matters raised at the hearing and in Qwest’s Reply Comments, Ex. 2 (“Qwest Reply”). Where possible, the brief will refer back to the Memorandum of Public Counsel Regarding Qwest Petition to Terminate Service Quality Program, Ex. 56C (“PC Memorandum”), rather than repeat in full factual and policy discussions set out there.

II. PETITION FOR TERMINATION

A. The Commission Should Apply The “Public Interest” Test To The Qwest Petition.

3. The U.S. West/Qwest merger settlement order¹ does not establish a specific standard for use in this case. There is no basis for applying, as Qwest suggests, the rule waiver provisions of WAC 480-120-015 or WAC 480-07-110, since this case does not involve an administrative rule. Qwest points to no evidence that the parties intended this to be the standard. The proper standard, therefore, for the Commission to apply in considering whether to grant the Qwest petition for early termination is the public interest standard. The public interest test applies both because of the Commission’s general statutory authority to regulate in the public interest, RCW 80.01.040(3), and because the Service Quality Performance Program which Qwest seeks to terminate was found by the Commission to be in the public interest in the merger settlement order. Merger Settlement Order, p. 24. It follows that for the Commission to terminate the program, it must find that early termination is in the public interest.

B. Continuation Of The SQPP Through 2005 Is In The Public Interest.

1. **Neither the Customer Service Guarantee nor the Commission’s new rules would be an effective substitute for the SQPP.**

¹ *In re Application of US WEST, INC. and QWEST COMMUNICATIONS INTERNATIONAL INC. For an Order Disclaiming Jurisdiction or, in the Alternative, Approving the US WEST, INC. - QWEST COMMUNICATIONS INTERNATIONAL INC. Merger*, Docket No. UT-991358, Ninth Supplemental Order Approving and Adopting Settlement Agreement and Granting Application (“Merger Settlement Order” or “Merger Settlement”). The “Retail Settlement Agreement” is included as Attachment A to the Ninth Supplemental Order, and the “Competitive Settlement Agreement” is included as Attachment B to the Order.

a. The Customer Service Guarantee program.

4. Qwest argues that the SQPP is no longer necessary in part because the company remains subject to a Customer Service Guarantee program (“guarantee program”) and to newly revised service quality rules which provide “double coverage” with the SQPP. Ex. 2, Qwest Reply, ¶¶ 15-16.
5. The Customer Service Guarantee program is not interchangeable with and is not a substitute for the SQPP. The two programs, while complementary, operate differently and serve different purposes – the guarantee program focuses on individual customer compensation, the SQPP is designed as an incentive mechanism. Ex. 56C, PC Memorandum, p. 6; Ex. 40, Staff Statement, ¶ 42. In addition, the guarantee program and the SQPP do not provide identical coverage of service quality problems. PC Memorandum, Ex. 56C, p. 7, lines 6-14. Moreover, in both the merger settlement and the DEX settlement, Qwest agreed to a continuation and expansion of the guarantee program, side by side with SQPP, with no suggestion that the two were duplicative.² Not only does the guarantee program not duplicate the SQPP, Public Counsel discovery, and testimony of Qwest witnesses at the hearing reveals shortcomings in the implementation of the guarantee program itself.
6. Qwest’s reports to the Commission regarding the guarantee program are inadequate and incomplete. The reports, entitled “Washington Customer Remedy Service Quality Credits,” are interesting to say the least. The reports provide information regarding only three of the five

² *In the Matter of the Application of QWEST CORPORATION Regarding the Sale and Transfer of Qwest Dex to Dex Holdings, LLC, a non-affiliate*, Tenth Supplemental Order: Approving and Adopting Settlement Agreement; Granting Application and Accepting Notice, Subject to Conditions, UT-021120, August 1, 2003, ¶ 29.

components of the tariffed guarantee program: Out-of-Service credits, Trouble Report Rate Credits, and No Dial Tone credits. Ex. 24C; Tr. 1955-56; Ex. 23 (copy of tariff). In discovery, Public Counsel asked for information regarding all five components, and the answers are contained in Exhibit 35C. Exhibit 35C shows that, of all customer payments made by Qwest under the guarantee program, only a tiny fraction have been reported to the Commission. The two omitted categories (I. Credit for Missed Guaranteed Appointment or Guaranteed Commitments; II. Delayed Primary Basic Exchange Alternative (aka the “held order guarantee”)) account for [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] of the total [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] paid by Qwest between 2001 and 2003 under the program. In other words, Qwest reports to the Commission only [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] of customer remedy payments made under the guarantee program. Of the five components of the program, Qwest reports only the two where no remedies at all are paid, and the one where payments are relatively negligible. Qwest was unable to say at the hearing why this was the case, or whether they were willing to include the missing data in future reports. Tr. 1956, l. 16-Tr. 1958, l. 15.

7. It is difficult for customers to learn of the guarantee program. One means is through the Customer Bill of Rights (CBR). Ex. 21, Tr. 1974, ll. 1-9. While the CBR is included in the Annual Service Quality Report to customers, Ex. 56C, PC Memorandum, Attachment A, information about the CBR or the guarantee program does not appear to be made readily available to customers in a time or manner when they would logically need and be attentive to such information. Qwest’s “Welcome Letter” to new customers does not contain the entire

Customer Bill of Rights, or provide any details of the program. Ex. 21, p. 2. Tr. 1974, ll. 10-21.

A customer who visits the Qwest website pages with a service question regarding residential service or Washington customer service would find no reference to the Customer Bill of Rights or the guarantee program on the pages. To locate the CBR (and thereby the guarantee program) the customer must know to click on the “Legal Notices” link in very small print at the bottom of the page, hardly an obvious or intuitive choice. Exs. 21, 22., Tr. 1974, l 22- Tr. 1975, l. 2.

8. Qwest practices in administering the program also raise questions about its value as a broad remedy for service quality problems. For example, as noted above, one component of the guarantee program provides an Out-of-Service Trouble Condition Credit. Under the guarantee, “[c]ustomers who have an out-of-service condition (no dial tone) on their lines that is not cleared within two working days (excluding Sundays and holiday) will receive a credit of \$5.00.” Ex. 23, p. 5 (Tariff Section 2.2.2.B.3). In practice, however, Qwest limits payment of this credit only to customers who call and report the out-of-service condition, a limitation not contained in the tariff. This is the case even though some out-of-service conditions, such as a major cable cut, generate out of service “tickets” and are known to the company, even without customer calls. Ex. 26. The company has the ability to determine which customers are affected by this second category of problems, Tr. 1966, l. 20-Tr. 1967, l. 14., but customers who suffer outages under this scenario do not receive a credit, unless they happen to call Qwest. As noted, the filed tariff does not recognize this restriction. Ex. 23, p. 5. This practice may help explain the dramatically lower level of remedy payments for out-of-service conditions as compared with the held orders and missed appointments components.

9. In cases where customers must schedule an appointment to get an out-of-service condition repaired, customers are not told they forfeit their payment under the Out-of-Service Trouble Condition Report guarantee if they ask for a repair appointment outside the 7 calendar day time frame. Ex. 25; Qwest Response to Record Requisition No. 1 (provided orally), Tr. 2008, ll. 13-23.
10. Given the different purposes served by the two programs, the unanswered questions regarding guarantee program reporting, and the shortcomings in Qwest's administration of the guarantees illustrated above, it is hard to see the guarantee program as a viable substitute for the SQPP. In addition, the data on magnitude of guarantee payments, while showing an improving trend, further bolsters the conclusion that service quality problems still persist for large numbers of customers.

b. The Commission's rules are not a replacement for the SQPP.

11. Qwest's argument that the existence of newly revised Commission service quality rules, in combination with the guarantee program, obviates the need for the SQPP is not well taken. Neither is the suggestion that confusion will somehow arise between the SQPP and the new rules. See Ex. 56C, PC Memorandum, p. 14, ll. 7-16. From its inception, the SQPP has co-existed with both the guarantee program and the Commission's general telecommunications service quality rules. The fact that the rules have recently undergone some revision does not change this. The rules modifications were not undertaken for the purpose of replacing the SQPP. The SQPP is a custom-tailored plan designed to address the specific service quality issues confronting Qwest in a way that the company agreed to, and committed to implement. Another important difference between the SQPP and the Commission rules is self-executing

nature of the program, which operates without need for cumbersome complaint and penalty actions. PC Memorandum, Ex. 56C, p. 14, ll. 17-25.

2. The trends in Qwest's Washington investment and staffing levels are a cause for concern.

12. The directional evidence in this docket regarding Qwest's investment and staffing levels should also send a warning signal that militates against termination prior to December 31, 2005. Qwest's investment levels in its Washington state infrastructure have shown a [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] trend since the merger and for 2002 and 2003 [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] Ex. 56C, PC Memorandum, Confidential Attachment B. While Qwest argues that, on average, it has met the investment requirements of the merger settlement agreement, Ex. 2, ¶22,³ the agreement is properly read to require that the agreed level of \$133 per access line per year must be met on an annual basis.⁴ U S West witness Theresa Jensen appears to have agreed with this interpretation at the hearing on the merger settlement. Ex. 56C, Attachment D (excerpts of merger settlement hearing transcript), p. 393, ll. 16-17, p. 395; Tr. 2077-2078 (June 7, 2004, hearing, Ms. Kimball).
13. The relationship between Qwest investment levels in Washington and its service quality is not new issue to this Commission. Ex. 56C, PC Memorandum, (discussion and citations at pp. 8-9).⁵ Declining investment levels have rarely boded well for service quality.

³ Merger Settlement Order, Attachment A, pp. 8-9, contains the specific requirement.

⁴ The use of a "per access line" investment target allows for an "apples-to-apples" measurement of investment from year to year, even though total access lines in the state may change. Notwithstanding this, Qwest's Reply Comments attempt to explain declining investment levels as a function of declining customer and line levels. Ex. 2, ¶ 22.

⁵ See also, *WUTC v. USWC*, UT 950200, Eighteenth Supplemental Order, p. 130 (cited in Ex. 40, ¶ 44).

14. In addition to investment, Qwest staffing levels in Washington are a relevant factor to consider in reviewing the petition. In its Reply Comments, Qwest states:

One of the reasons that Qwest is able to continually provide a high standard of service quality in Washington is due to the appropriate level of installation and maintenance personnel that Qwest has staffed across the state. Ex. 2, Qwest Reply, ¶ 23.

While this statement appears to be intended to provide reassurance, the record in this case shows that Qwest staffing levels in functional areas most pertinent to service quality are declining dramatically.

15. As shown in the confidential table below, during the three-year period from year-end 2000 to year-end 2003, there was a [CONFIDENTIAL BEGINS] *** [CONFIDENTIAL ENDS] reduction in the number of local network staffing in Washington. Record Requisition 3. During the same period, Qwest's access line count in Washington decreased by a much lower rate of [CONFIDENTIAL BEGINS]***[CONFIDENTIAL ENDS]. Ex 56C, Confidential Attachment B.⁶

⁶ According to Qwest, Local Networks employees are "responsible for the overall performance of both Local and National network operations including narrowband and broadband, provisioning, repair and access, field forces, central office switches and the Reliability Operations Centers." Ex 32, p. 1. (see also Ex. 2, ¶23). While Qwest asserts in Ex. 11 that the number of dispatches for repair and installation have decreased from 2001 to 2003, there is no evidence in the record that the overall scope of work of local network employees has been reduced by [CONFIDENTIAL BEGINS]** [CONFIDENTIAL ENDS] during this three year period. In addition, while Qwest outsources some of its local network activities to third-party vendors, the company was not able to provide data regarding the number of employees of third-party vendors during 2001 to 2003. Ex. 33. Qwest has indicated, however, that in general, Qwest is reducing work conducted by outside vendors, which should result in added workload for Qwest employees. Ex. 33 states in part: "Qwest continues to reduce the outsourcing of work to vendors by having Qwest employees do the work, i.e., placement buried service wire and cables in open trenches, placing of entrance cables into buildings and the plowing of buried service wire in some cases." Ex 33 p. 1.

Confidential Table: Net Reduction in Qwest WA Local Network Staffing

[CONFIDENTIAL BEGINS]

[CONFIDENTIAL ENDS]

16. Employee reductions of this magnitude, and the trend in investment levels, put pressure on service quality. This is particularly true given the context of the Qwest’s financial situation, which Staff discusses in its Statement. Ex. 40, ¶ 28. These data counsel that the SQPP should be allowed to run its full course so that the program incentives remain in place as a counterbalance.

3. Qwest’s claims of “excellent” and “exemplary” service are not supported by the record.

17. In Qwest’s Reply Comments, Mr. Reynolds states: “On an objective basis, and in comparison with other companies, Qwest provides excellent service.” Qwest Reply, ¶ 6. Elsewhere in the Reply Comments, Qwest “stands by its contention that its performance is exemplary.” Id., ¶ 25. Other evidence in the record casts doubt both on Qwest’s comparative standing, and its progress relative to its own history.

18. The American Customer Satisfaction Index (ACSI) survey,⁷ Exs. 28, 34, to which Qwest subscribes, though acknowledging some recent improvement, indicates that Qwest has the lowest rating of any fixed line local or long distance company surveyed, that it still remains over 15 % below its 1995 level, and that its customer satisfaction levels fell after the merger, only returning

⁷ While the ACSI does not measure the specific metrics used in the SQPP, the survey results are relevant as a way to put in perspective Qwest’s broad claims in this proceeding regarding its generally high levels of performance and service quality, and relative standing in the industry. Qwest, as noted, is itself a subscriber to the ACSI, and did not object to its introduction in evidence.

to the level of the merger year in the 2004 report. Ex. 34, p. 2, The ACSI narrative summary for 2003 states:

Qwest has improved dramatically. Its ACSI is up almost 11 %. This is a very large increase, but Qwest still has a long way to go. It remains at the bottom of the industry, with a score of 62. Amid accounting scandals, and many customer service problems, the company's ACSI dropped by 26 % in the 1995-2002. Such a drop is almost always related to massive customer defections. This was the case for Qwest. In fact, customers seemed to know that something was amiss before shareholders did. Whether the recent ACSI results signify a change in fortunes for Qwest remains to be seen. What is clear, however, is that the efforts in improving customer service are having an effect. Specifically, it seems better availability of services (hours open, expansion of internet service) is having the desired result. Ex. 28, p. 8.

What is significant about this analysis is that while it notes the recent improvement, it also expresses strong cautionary observations about both the distance Qwest has to go, and whether the improvements will be durable. This is hardly a ringing endorsement for the Qwest message in this docket that all is well and incentives no longer have any role to play.

19. Qwest argues that it compares well with other Class A companies in Washington. Qwest Reply, Ex. 2, ¶¶ 25-27. The premise of Qwest's argument is that if other companies perform well without an SQPP, then Qwest would presumably do likewise, and the program is unnecessary. Public Counsel would suggest that this logic is flawed and the premise is questionable at best. In fact, given Qwest's well-documented history of service quality problems, and the existence of the SQPP, intentionally designed as an incentive, it would be far more logical to conclude that Qwest has only achieved this level of performance because of the incentives provided by the SQPP. Qwest's argument for parity with other Class A companies also ignores the company's unique position in the Washington market. Ex. 40, Staff Statement, p. ¶20.

4. Qwest's service has improved, but the need for an incentive remains.

20. Public Counsel acknowledges that Qwest service quality performance has shown improvements in a number of areas since the merger, though some problems remain. See, Ex. 56C, PC Memorandum, p. 4, ll. 3-22. The fact of improved performance alone is not a justification for early termination, however. This trend indicates that the program is working as an effective incentive. By definition, an incentive program hopes to create improvement during its existence. When improvement actually results, it should be viewed as a mark of success of the program, not as a death warrant.

21. It is also important to recall that Qwest continues to operate under the Qwest Performance Assurance Plan (QPAP), a set of company-specific wholesale service quality measures which are tied to Qwest's retail service quality. Maintaining the SQPP will help avoid an imbalance between the wholesale and retail service quality commitments of the company. Ex. 56C, PC Memorandum, pp. 12-13.

22. Finally, Qwest has not made the case that there is sufficient competitive pressure to ensure that service quality is maintained at satisfactory levels for local telephone service. Even in an era of new technologies and emerging competition, Qwest continues to serve the vast majority of residential customers in its service territory, and over two-thirds of the business customers. Residential service, which represents 73 percent of Qwest's retail access lines, Ex. 3, p. 1, has not been competitively classified. Ex. 56C, PC Memorandum, pp. 11-12.

C. Public Comment Strongly Supports Continuation of the SQPP.

23. Under the Commission's modified public comment procedures in this docket, Public Counsel presented the testimony of three public witnesses. All opposed termination.

24. Steve Marquardt, head of communications and research for Service Employees International Union, Local 6, Seattle, testified that “[s]ervice problems have a disproportionate effect on low wage workers and poor people, and that’s why I’m here today....When their telephones don’t work or they have to wait for repair, they may lose a day’s wage, \$85 to \$100 they simply cannot afford.” Tr. 2089, line 21 – Tr. 2090, line 5. He went to state that “our members have expressed a high degree of frustration with telephone service problems, and some have had trouble on the job because of them.” Tr. 2090, ll. 10-13. *See also*, Ex. 69.

25. Robert Pregulman, Executive Director of Washington Public Interest Research Group (WashPIRG), testified on behalf of the organization. WashPIRG has been following the case as in Interested Person. Mr. Pregulman stated:

The reason we are here is because we represent about 20,000 members here in Washington. We work on consumer protection and environmental issues. Obviously this is a consumer issue that we have been following closely for quite some time and have been concerned about the level of service that Qwest has been providing its customers....

Our feeling is that if historically before the merger had happened that Qwest had had even an average level of consumer service that there’s a good chance this agreement most likely would not have been put into effect. Its been put into effect because of a number of reasons that people have already mentioned here today, as we said in our statement, we strongly support that the SQPP stays in place. Tr. 2080, l. 16-Tr. 2081, l. 10. *See also*, Ex. 67.

26. Derek Dexheimer, an individual Qwest customer, was unable to attend the hearing in person, but tendered a written statement that said:

The customer service standards currently imposed on Qwest should be continued for the full term, as originally agreed by Qwest. Despite its PR, the company still does not regularly meet these standards; were they to be removed, history has shown the profit motive will drive service to the lowest possible level. Ex. 68.

27. As reflected in Exhibit 80, the Commission received a large number of comments from the public. All of the 621 comments opposed termination. Qwest opposed a requirement that it provide broad individualized public notice to its customers of the proposal to terminate the program. Thirteenth Supplemental Order, ¶26. Qwest had an ideal opportunity to inform its customers of its views on the plan and its desire to terminate when it sent out its annual Service Quality Performance report for 2003. Ex. 56C, PC Memorandum, Attachment A. The annual report, which is dated 02/04, was sent to customers in the same time period when the petition was filed. The annual report describes the program in detail, and the company's 2003 performance, but makes no mention of Qwest's intention to seek termination of the SQPP.
28. While some customers presumably learned of the petition from newspaper reports about the case, many only learned of the petition to terminate from an email alert sent statewide to WashPIRG members. Most of the comments received by the Commission were prompted by the alert. Significant numbers of those who responded personalized their messages with individual experiences of poor Qwest service quality.
29. Qwest, although offered the opportunity, did not present any public witnesses in support of termination.

III. REQUEST FOR MODIFICATION

A. The Commission Should Use The Same Approach It Previously Used In This Docket To Reject Modification.

30. The Commission should view this petition for modification in the same light as the request for modification in 2002, where it stated:

The Commission found in its Order that the Agreement, including the Service Quality Performance Program, is in the public interest. Absent a showing of, for

example, changed circumstances or significant hardship, or other convincing reason, the argument that one of eight performance standards can be improved upon is not sufficient for the Commission now to rewrite that standard over the objections of other parties to the Settlement. We are persuaded that the equities and the public interest disfavor granting the relief Qwest has requested because it is imbalanced. Accordingly, Qwest's Petition for Modification should be, and is, denied. Any, or all parties are always free, of course to present to us a more balanced proposal to modify the Agreement.

Twelfth Supplemental Order: Denying Petition for Modification of Ninth Supplemental Order and Mitigation of Credit Amount, March 13, 2002, ¶26. (footnote omitted).

31. As noted above, Qwest's suggestion that the rule modification standards apply here is not persuasive. This is an order of the Commission, not a provision of the Washington Administrative Code. The provisions cited by Qwest, WAC 480-120-015 and WAC 480-07-110, are limited expressly by their terms to modifications of rules.

B. The Commission Should Deny the Qwest Request to Modify the SQPP.

1. Qwest's proposal is unbalanced, unilateral, and untried.

32. After three full years of operation, with only 18 months left before the program ends in any event, Qwest now asks the Commission to engage in a wholesale revision of the SQPP. The Commission should reject this modification request for the same reasons it rejected the company request in 2002.

33. The proposal is brought forward unilaterally, rather than by all the parties to the settlement. In the event the Commission wishes to entertain any modifications of the program, all parties should be provided an opportunity to make their own proposals. Public Counsel would expect to address a number of areas where it believes the program could be strengthened to better obtain company compliance and improve performance.

34. The Qwest proposal is unbalanced in the sense that the revisions have an overall one-sided effect of reducing Qwest's obligations and potential liability. The company proposes more lenient rules for the out-of-service repair interval, for the WUTC Consumer Affairs standard, and for the repair and business office 80/30 answer time standard. The effect of Qwest's proposals for the 2003 reporting year would have been to reduce the company's penalty amount by nearly three-quarters – from \$1.9 million to \$509,000. Ex. 56C, PC Memorandum, p. 20. It is not clear what customers receive on their side of the ledger to counterbalance this recommendation. The proposal seems little more than an effort to reduce Qwest's financial liability.

35. Many of the arguments the company now raises against the individual program measures are arguments that were equally available to the company at the time of the merger. Qwest may not now claim that these are new and unanticipated problems that warrant change. Additionally, as the Commission noted in its Twelfth Supplemental Order, Qwest's identification of asserted technical improvements to specific program measures is not sufficient justification for modification.

36. The parties did not contemplate, and therefore did not reflect in the merger settlement agreement that they could be brought back to the drawing board on one party's motion to redesign the program. The program was intended to continue until 2005 unless terminated as no longer in the public interest. Qwest's proposal for a major revision late in the life of the program also ignores the practical reality that changes in record-keeping and reporting requirements would require significant expenditure of effort by all parties to implement. It

makes little sense, from an efficiency perspective, to incur the disruptive effect and resource costs of implementing such changes when they would be in effect for such a short period of time.

37. US West and Qwest representatives testified eloquently at the merger settlement hearing about the incentives to improve service quality that the program would provide, Ex. 56C, PC Memorandum, p. 7, ll 1-5, and the strength of the company commitment to the standards. Id, p. 19, 3-12. That program is now in place and there is substantial evidence that it in fact has provided incentives for service quality improvements. *See e.g.*, Ex. 14C (efforts to improve business office answer time performance), Ex. 15C (actions to improve response to WUTC Consumer Affairs); Ex. 56C, PC Memorandum, p. 4, lines 5-15. In place of this track record, Qwest proposes to substitute untried new measures with disputed effects. Notwithstanding Qwest's rhetorical claims and hypotheticals, the extent to which any of its proposals would provide improved incentives over those currently in place remains purely speculative.

2. Alleged flaws with “80/30” standard for business office and repair calls are not supported by the evidence.

38. Qwest's requested modification to the 80/30 standard recommends substitution of an “average wait time” of 60 seconds as an alternative, since that is the standard contained in the new rule.⁸ Qwest's assertion that an average wait time standard is superior to the existing 80/30 standard is simply not supported by the record. Data shown in Ex. 56, PC Memorandum, Confidential Attachment C, indicates very clearly that as average wait time [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] the percentage of calls answered within

⁸ “80/30” refers to answering 80 percent of calls in 30 seconds, the standard required in the merger settlement for repair calls and for customer service calls to the business office. Merger Settlement Order, Attachment B, p. 3. The modification proposal of 60 second average wait time is in Ex. 1, Qwest Petition, Attachment 2, items 5 and 6.

thirty seconds [CONFIDENTIAL BEGINS]*****[CONFIDENTIAL ENDS]. For example, on page two of Attachment C, the results for Qwest’s business office answer time for August 2003 indicate that the average wait time was [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS], and only [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] of calls were answered within 30 seconds. During June 2003, the average wait time was [CONFIDENTIAL BEGINS]*****[CONFIDENTIAL ENDS] and [CONFIDENTIAL BEGINS] ***** CONFIDENTIAL ENDS] were answered within 30 seconds.⁹ This data shows that an average wait time standard of 60 seconds, which Qwest proposes in its modification proposal, represents a significant weakening of the answer time standards in the SQPP.

39. In Ex. 6, Mr. Reynolds argues that meeting the monthly Answer Time 80/30 standard is “nearly impossible without serious overstaffing” due to the alleged “Monday morning” phenomenon. Mr. Reynolds goes on to assert that when Monday results are missed, “the nature of the measurement makes it nearly impossible to achieve the monthly standard.” Ex. 6, p. 4. Qwest’s Answer Time Performance reports for 2001- 2003, however, reveal no evidence that this phenomenon actually exists. For example, in 2002, Qwest met the standard for 9 months of the year, although many Mondays occurred in the nine successful months. In 2003, Qwest’s performance worsened significantly, and it failed to meet the standard in 8 months of the year. While the Answer Time reports contain a specific “Exceptions” section for detailing causes for

⁹ The table labeled “CSG and NBA combined totals” reflects the business office answer time performance, as reported by Qwest in their 2003 service quality reports filed in this docket.

problems, nowhere in the 2003 report (or in the other years) is there any reference to the “Monday morning” phenomenon.

40. In the “Exceptions” section of Ex 18C Answer Time performance reports, the company other reasons why they not have met the standard for a particular month. For example, on page 3 of Ex 18C, comments for November 2003 include that [CONFIDENTIAL BEGINS] *****

***** [CONFIDENTIAL ENDS] Ex. 19 explains that Qwest offers satellite TV services in association with Direct TV and DISH network. To the extent that [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] these new joint marketing efforts resulted in [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] for customers calling Qwest's business office, we do not believe that justifies a weakening of the standard from an 80/30 standard to an average wait time of 60 seconds. Additionally, issues cited by Qwest as reasons for failure to meet the 80/30 standard in 2003 include a [CONFIDENTIAL BEGINS] *****[CONFIDENTIAL ENDS] in April, and a [CONFIDENTIAL BEGINS] ***** [CONFIDENTIAL ENDS] in June. Ex 18C. Similarly, these are issues that are under the control of Qwest, and do not support Qwest's request to modify of the answer time standards to a weaker standard.

41. Evidence in the record regarding employee training is also cause for concern. Mr. Reynolds’ Statement indicates that call center work is increasingly demanding and training is a major issue. Ex. 6, p.3. In response to discovery, however, Qwest provided information that

[CONFIDENTIAL BEGINS] *****

***** [CONFIDENTIAL ENDS] which seems inconsistent

with Mr. Reynolds statement. Ex. 14C, p. 4.

3. Out of Service Repair Standards and Qwest’s attack on the “100 percent” measure.

42. Qwest has devoted substantial effort in this case to establish the proposition that any measure with a 100 percent standard is by definition a poor incentive because (a) such a standard is impossible to meet; and (b) once the standard is failed in a given month, no further incentive exists to provide good service that month. Neither of these points has been proven in this proceeding.

43. Qwest’s performance under the 100 percent standard for “Out-of-Service-Repair Intervals” has in fact been improving over the term of the SQPP, which would appear to indicate an incentive effect. Ex. 56C, PC Memorandum, Attachment A. Qwest has also undertaken internal efforts to improve its out-of-service performance, as reflected in Ex. 20, a response to a Staff data request asking for a list of such actions. This is another indication of the presence of an incentive effect for this measure.

44. Mr. Pappas’ statement supporting modification of the out of service standards cites rainy and windy weather in Seattle as an example of the problems in meeting the 100 percent standard. Ex. 11, pp. 3-4. Rainy and windy weather in Seattle, and Western Washington, was a known phenomenon at the time the company agreed to the out-of-service standard in the SQPP. Weather of this type is not an unanticipated event or something that developed only after the SQPP was implemented. The merger settlement order provides that Qwest can file a mitigation

petition to address especially challenging situations. Merger Settlement Order, Attachment A, p.

7. Qwest did not file a mitigation petition in connection with the November 2003 weather related problems cited by Mr. Pappas.

45. While a 100 percent standard is undoubtedly difficult to achieve, the Commission has such a standard in its own rules now for out-of-service interruptions, recently approved in the rules revisions. WAC 480-120-440. Parties are potentially subject to monetary penalties upon complaint if they fail to meet this standard. It is also important to note that the 100 percent standard, whether in the merger settlement or the rule, has exceptions, in effect built-in mitigating factors to avoid unreasonable inflexibility. Qwest is simply wrong that such a standard is by definition an unreasonable requirement for service quality purposes.

IV. CONCLUSION

46. The Service Quality Performance Program has shown results, alone a good argument for continuation. It should not be a victim of its success. There is ample other evidence in the record that it is still needed for the duration of its term. Service problems persist. Investment and staffing levels are matters for concern. The competitive environment does not offer a substitute solution at this stage. Qwest has failed to carry its burden to show that either early termination or modification of the program are in the public interest. For the foregoing reasons, Public Counsel requests that the Commission deny Qwest's petition.

RESPECTFULLY SUBMITTED this 18th day of June, 2004.

CHRISTINE O. GREGOIRE
Attorney General

Simon J. ffitich
Assistant Attorney General
Public Counsel